

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. H204976 & H306277

LYNA M. BEALS, EMPLOYEE	CLAIMANT
MILLIGAN RACING (ALLEN MILLIGAN), EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE CORP./ LIBERTY MUTUAL GROUP, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 31, 2024

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed May 9, 2024. The administrative law judge found that the claimant proved she sustained a compensable neck injury on May 11, 2022. The administrative law judge awarded temporary total disability benefits and temporary partial disability benefits. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding that the claimant proved she sustained a compensable neck injury on May 11, 2022. The Full Commission finds that the claimant proved she was entitled to temporary total disability benefits beginning May 14, 2022 and continuing

through January 12, 2023. We find that the claimant proved she was entitled to temporary partial disability benefits beginning January 13, 2023 and continuing until a date yet to be determined.

### I. HISTORY

Lyna Beals, now age 51, testified that she became employed with the respondent, Milligan Racing, in July 2021. Ms. Beals testified that she was hired to be a “groom” for the respondent-employer, a horse trainer. The claimant testified that she was eventually promoted to the position of Assistant Trainer.

The parties stipulated that the employee-employer-carrier relationship existed at all pertinent times, including April 16, 2022. The claimant testified on direct examination:

Q. Now, what happened on April 16<sup>th</sup> of 2022?

A. I was in the paddock. The paddock is this event where the live races come and there's several stalls 1 through 9 on one side, and then 10 through 14 on the other. I was in stall 8 and the groom, James Aker, he had the horse....So I was standing to the right of the horse on the horse's right front leg, and she has never been in the paddock before for any live race. She is what they call a first-time starter, and so she was very nervous and she had jumped and flipped over, and the groom had to take her and walk her a few laps....I was in her right front leg area and the horse just reared up, lunged forward, and I was right in her line of fire on the front right of her arm. And all I know is I went flying past the 9 hole all the way to the – almost to the wall where the people were, and when I landed, I landed on my right shoulder and I hit my right side of my head on the cement, and I landed on my right knee, as well.

An Oaklawn Emergency Medical Services ACCIDENT REPORT was prepared on April 16, 2022:

Description of Accident: EMS was sitting in the paddock watching the 3<sup>rd</sup> race when the #8 horse Chaos Magic reared up, and caused the Patient to slam into the ground Injuring her elbow, and head. Ems checked her out, and gave her two cold compresses. She declined an ambulance, and signed an AMA.

The claimant testified that the respondents directed her to treat at Hot Springs – Sherwood Urgent Care, where the claimant was seen on April 18, 2022: “Patient comes in today for a Pain, Shoulder, Pain and Pain, Neck. She was hurt Saturday while working with horses at racetrack. She states she was pushed over striking her right shoulder and her neck hurts....Pt is here in clinic with complaints of a horse kicking her, with injuries caused for x-ray.” The assessment was “Pain in right shoulder” and “Cervicalgia.” It was noted, “Xrays are negative.”

The claimant followed up at Sherwood Urgent Care on April 21, 2022: “Pt came in on 04/18/22 stating she was kicked by a horse 2 days before. Pt was kicked on the left side by horse but this caused her to fall and she landed hard on her right side striking head on ground. Xrays performed of shoulder and cervical spine at WNL’s....Symptoms are now better....ROM in neck is now normal.” The assessment was “Contact with horse, struck, initial encounter.”

The parties stipulated that the employee-employer-carrier relationship existed on May 11, 2022. The claimant testified on direct examination:

Q. So did you continue working for [the respondents] during this time that you were getting treatment at Urgent Care?

A. Yes. I worked every day. There was never a break.

Q. Did they have you on light duty?

A. No. Actually, I had more workload....I had to cover everything when it came to cleaning out the stalls, gutting the stalls. That meant wheelbarrows full out of all 25 stalls, and you have to just have it clean or else there's a deposit that he would lose out on, and so everything has to be removed and moved to the farm, which meant the tack, the saddles, bins, the washing machine. I had to move all of that with my husband in his truck, which was approximately six truckloads full of – of heavy items that I was not supposed to lift.

Q. So what time period was that, that you were doing this work?

A. This was around May 11<sup>th</sup>. There were horses already shipping out and we have, like, a week for us to be out of Oaklawn completely. Even if the horses are gone, you still have to clean the remnants of what's left.

Q. Okay. So are you still working for Mr. Milligan now?

A. No. On May 14<sup>th</sup> I was at the farm working in Royal and my back was out due to all of that lifting and the washing machine and gutting the stalls. It tore my back up where my back was completely out, amongst my shoulder being injured, as well, and my neck and everything.

Thomas Beals, the claimant's husband, testified and corroborated the claimant's testimony that she had been performing clean-up work for the respondents. The respondents' attorney cross-examined Mr. Beals:

Q. You said that she worked up until she got hurt in May?

A. Yes, sir....

Q. Did she, as this medical report says on 5-11, she reinjured her right shoulder and her neck loading a truck?

A. Yes. Yes. She was in pain immensely. Honestly, you know, personally I don't think she should have been doin' all that but, I mean, yes, she did hurt herself again.

Q. And that's when she stopped working?

A. Yes, and she – then she didn't no more.

Q. Okay. And did she – did she tell you she hurt herself loading that truck, "I hurt my back"?

A. Yeah. She was in tears. She was in a lot of pain.

An administrative law judge examined Thomas Beals during a hearing held January 20, 2023:

JUDGE BLACK: Concerning this May 11<sup>th</sup> incident, were you present when she allegedly had another injury?

A. Yes. We were loadin' a truck.

Q. What happened?

A. We were pickin' up either a washer or a dryer, it may have been a little fridge, and she went to pick it up and then she just gave out, and I was like, "What's wrong?" And she's like, "I hurt myself again." And I was like, "Let me get it." And I got in the truck and she was kinda just holdin' her neck and her shoulder, so I was just – you know, I knew she was in pain and I didn't wanna, you know, I guess interrogate her or nothin'.

The claimant testified that she hired another individual to assist with caring for the respondents' horses, but that the respondent-employer did not approve of the new hire. The claimant testified on direct examination:

Q. So after Mr. Milligan was upset about this guy that you were having work for you, what happened?

A. He called me. I was at the farm and he called and said he does not want that guy there and he does not want him working. And he said, "Unless you are 100% better, I don't care if it's one year or 10 years from now, do not come back."

Q. Okay. And was that the last time that you worked for him?

A. Yes. That was when I had to gather all my stuff at the farm, all my tack and everything that I had out there.

The claimant's testimony indicated that the respondents terminated her employment on or about May 14, 2022.

The claimant treated at Sherwood Urgent Care on June 14, 2022:

Patient comes in today for a clearance to return to work, Pain, Neck, Pain and Pain, Back....

Pt had an injury at work on 04-18-22 and was seen in clinic. Pt returned again for same injury on 04/21/2022. Pt had a CT of head performed on 04/26/22 d/t head injury and migraines after incident. Pt received the results of 04-28-22. Pt was told to come back in for clearance to return to work. Pt never returned. Pt states today her employer told her she can not return to work until she is "100% better." Pt states she does not feel 100% better and wants to know what she needs to do....

Pt reports continued right sided neck pain from the initial injury. She did have c-spine and right shoulder xrays when she was in clinic which were found to be normal....

Reports she hurt her lower back in a separate incident 5/11 lifting something at work and it has also continued to bother her....

It was noted on June 14, 2022, "She reports she continues to have right neck/shoulder pain. There was also a secondary lower back injury that happened in a separate incidence 5/11. I have recommended the patient go to physical therapy and follow up in clinic in 2 weeks. If she does not improve with physical therapy we will move forward with MRI [of] her neck and shoulder. She will continue to be on light duty for now, I do not feel she needs to be placed completely off work." The assessment was "Pain in right shoulder" and "Strain of muscle, fascia and tendon of lower back[.]"

The record includes an Excuse for Work dated June 14, 2022: "The above patient was seen in our clinic for a work related injury/illness and was under the care of Chreene, Robyn, NP." The Excuse for Work indicated, "FIT FOR RESTRICTED/ACCOMMODATED DUTY" from June 14, 2022 to June 28, 2022.

The claimant followed up at Sherwood Urgent Care on June 28, 2022:

Pt presents to clinic for follow up on neck and back pain. Pt reports no improvement with collar bone or Right Shoulder. Pt states she has not returned to work. Pt also states that physical therapy called and her first appointment is 7/7/2022....

Called pts boss, Jeanette Milligan to clarify if the patient could have light duty as the patient continues to state she has been unable to work due to her boss stating she had to be "100% before returning to work." Pts boss states she never told her that and that she has not been employed with her since 5/9. At the last visit the patient stated she was injured at work on 5/11 as well as reinjuring her right shoulder and neck. Discussed with patient that her boss states she was no longer employed with them and that I was unsure if this was still covered with workers comp as she was not an employee. Alternate ice and heat to your shoulder. Continue with anti-inflammatories and physical therapy as planned.

A physical therapist noted on July 7, 2022, "This 49 y/o pt presented to the therapy clinic with complaints of right shoulder pain following a work related accident. She works with a horse trainer and was kicked by a horse mid April. She was kicked on the left side and fell onto concrete on the right side. When she fell, she landed on her shoulder and hit her head....She

was first placed on light duty, but due to her work related activities, she has not been able to work since the incident.” The claimant began a program of physical therapy beginning July 7, 2022, and the diagnosis included “Cervicalgia.”

A Physical Therapy Discharge Summary was prepared on August 25, 2022:

Patient completed 50% of her written POC. During the course of her therapy sessions, she was more than 15 minutes late numerous times, no showed twice, and called to cancel within 24 hours notice once. Due to her habitual no show or attending therapy late, she was taken to the utilization review with other therapist to discuss the course of action. With her not attending therapy in a timely manner and no showing her appointments, she will be discharged from therapy. Her discharge and no show/tardiness will be relayed to her case manager for workmans compensation.

A pre-hearing order was filed on September 27, 2022. The claimant contended, “Claimant contends she is entitled to medical treatment for her neck, right shoulder, and low back. She contends she is entitled to temporary total disability as result of her injuries sustained on April 16, 2022. Claimant reserves all other issues.”

The parties stipulated, “The respondents have controverted this claim in its entirety.” The respondents contended, “The claimant worked as a groomer at Oaklawn Park during the racing season. The claimant was not injured due to a fall she had at work on 4-16-22. She does not have a compensable neck injury or head injury as there are no objective medical



findings. X-rays and CT scans of the neck, shoulder and head have all been normal.”

The parties agreed to litigate the following issues:

1. Whether the Claimant sustained compensable injuries to her shoulders, right elbow, and right knee.
2. Whether the Claimant is entitled to temporary total disability (TTD) compensation beginning on April 17, 2022 and continuing through a date yet to be determined.
3. Whether the Claimant is entitled to medical benefits for her alleged injuries.
4. Whether the Claimant’s attorney is entitled to a controverted attorney’s fee.

An MRI of the claimant’s cervical spine was taken on November 16, 2022:

HISTORY: Diffuse neck pain.  
FINDINGS: Structures at the craniovertebral junction are unremarkable. The normal lordotic curvature is minimally reversed....Disc desiccation noted throughout the C-spine.  
C2-3: Unremarkable.  
C3-4: Unremarkable.  
C4-5: Mild bilateral facet arthropathy.  
C5-6: Mild broad-based posterior annular disc bulge. Mild bilateral facet and uncovertebral osteophyte formation. Moderate right and mild left neural foraminal stenosis.  
C6-C7: Moderate bilateral facet arthropathy.  
C7-T1: Mild bilateral facet arthropathy.  
No cord signal abnormality.  
IMPRESSION: At C5-6, there is moderate right neural foraminal stenosis nerve impingement.  
Multilevel degenerative disc and facet changes.

On or about December 19, 2022, the claimant began treating with William James, CRNA under the supervision of Dr. John R. Pace. William James reported, “Neck pain with RUE NT and paresthesias. Both hands

are numb constantly. Onset 4/16/22. Pain into scapula region. Has went to PT. Reports while majority of symptoms are in RUE; numbness of hands is greater left than right.” Mr. James assessed “1. Cervical radiculopathy,” and he administered C5-6 epidural steroid injections on December 20, 2022 and January 3, 2023.

A hearing was held on January 20, 2023. The claimant testified on direct examination:

Q. So have you worked anywhere else since your employment with [the respondents] ended?

A. I always loved horses, obviously, and I just – with my hands, I have numbness in my fingers in both hands and sharp pains. I cannot feel a lot in my forearm and my fingers so I can't really do what I was set out to do, which was grooming. It's my passion, so I what they called downgraded to a hot walker at Oaklawn. A friend of mine – since they always look for me for work, one of the trainers had asked me, “Do you know any hot walkers? I need a hot walker.”

Q. So did you start as a hot walker?

A. Yeah.

Q. When was that?

A. This was last Friday.

Q. Okay. Was that the first work you had done since leaving Mr. Milligan?

A. Yes.

Q. All right. Do you anticipate to continue with that job?

A. I – I'm giving it a shot....

Q. Do you do any other work for this employer, where you are now, other than walking the horses?

A. No. This is just part-time walking, just simple walk in a circle.

Q. Okay. And how much do you get paid for that?

A. It's \$250.00 a week cash.

Q. And how many hours a week are you working?

A. Four hours a day, if that.

Q. Okay. So is that four hours a day, five days a week?

- A. Seven days in the horse business....
- Q. And has any doctor released you to full duty?
- A. Not yet, no.

In the meantime, William James assessed “1. Arthropathy of cervical spine facet joint” on January 31, 2023. Mr. James performed a “pericapsular facet joint injection” at C5/6.

William James’ assessment on February 28, 2023 was “1. Cervical radiculopathy – EMG/NCV BUE, RTC with results.” Mr. James also noted, “NEUROLOGIST REFERRAL – Schedule Within: provider’s discretion.”

An administrative law judge filed an opinion on April 19, 2023. The administrative law judge found, in pertinent part:

- 3. The Claimant proved by a preponderance of the evidence that she sustained a compensable injury to her neck on April 16, 2022, which resolved no later than April 21, 2022.
- 4. The Claimant failed to prove by a preponderance of the evidence her entitlement to any temporary total disability compensation.
- 5. The Claimant proved by a preponderance of the evidence that the medical treatment she received on April 18 and 21, 2022 was reasonable and necessary treatment for her compensable neck injury. However, the Claimant failed to prove her need for any future medical treatment for her neck injury.

There was no appeal of the administrative law judge’s opinion filed April 19, 2023. The administrative law judge thereafter entered an agreed stipulation, “5. All matters concerning AWCC Claim No. H204976 were resolved in my April 19, 2023, Opinion and are res judicata.”

A pre-hearing order was filed on November 8, 2023. The claimant contended, "Claimant contends she is entitled to medical treatment for her neck injury, exacerbated on May 11, 2022. Whether Claimant is entitled to temporary total disability and temporary partial disability benefits from date last worked full time to a date yet to be determined. Claimant reserves all other issues."

The parties stipulated, "4. The Respondents have controverted this claim in its entirety." The respondents contended, "Respondents will assert the following defenses: The claimant has suggested that her neck injury was exacerbated by another event on 5-11-22. All matters concerning claim #H204976 were decided in the 4-19-23 opinion and are res judicata. If there was a new incident, it should not be adjudicated under H204976. However, the Form C filed on 6-5-23 shows an injury date of 4-16-22. The claimant is not entitled to additional treatment for her neck or to TTD per the previous decision that was not appealed."

The parties agreed to litigate the following issues:

1. Whether the Claimant sustained a compensable injury to her neck.
2. Whether the Claimant is entitled to medical treatment for her alleged neck injury.
3. Whether the Claimant is entitled to temporary total disability (TTD) compensation.
4. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

After another hearing, an administrative law judge filed an opinion on May 9, 2024 and found:

3. The Claimant proved by a preponderance of the evidence that she sustained a compensable injury to her neck on May 11, 2022.
4. The Claimant proved by a preponderance of the evidence that the medical treatment of record she received was reasonable and necessary treatment for her compensable May 11, 2022 neck injury. She also proved her entitlement to the additional medical treatment recommended for her neck by Dr. John Pace, in the form of a referral to a specialist/neurologist and EMG/NCV studies of both her upper extremities.
5. The Claimant proved her entitlement to temporary total disability from May 12, 2022 until January 12, 2023. She also proved her entitlement to temporary partial disability from the date she began working part-time and continuing.

The respondents appeal to the Full Commission.

## II. ADJUDICATION

### A. Res Judicata

The respondents contend that the claimant's entitlement to benefits is *res judicata*. The purpose of the *res judicata* doctrine is to put an end to litigation by preventing a party who had one fair trial on a matter from relitigating the matter a second time. *Cox v. Keahey*, 84 Ark. App. 121, 133 S.W.3d 430 (2003), citing *Brandon v. Arkansas W. Gas Co.*, 76 Ark. App. 201, 61 S.W.3d 193 (2001). *Res judicata* applies where there has been a final adjudication on the merits of the issue by a court of competent jurisdiction on all matters litigated and those matters necessarily within the

issue which might have been litigated. *Beliew v. Stuttgart Rice Mill*, 64 Ark. App. 334, 987 S.W.2d 281 (1998). The key question regarding the application of *res judicata* is whether the party against whom the earlier decision is being asserted had a full and fair opportunity to litigate the issue in question. *Cater v. Cater*, 311 Ark. 627, 846 S.W.2d 173 (1993). *Res judicata* applies to decisions of the Commission. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996).

In the present matter, the Full Commission finds that the claimant's entitlement to workers' compensation benefits is not *res judicata*. A pre-hearing order was filed on September 27, 2022. The claimant contended, among other things, that she was entitled to temporary total disability benefits as a result of injuries she sustained on April 16, 2022. The respondents contended, among other things, that the claimant "was not injured due to a fall she had at work on 4-16-22." The parties did not agree to litigate compensability concerning an injury occurring any other date except April 16, 2022. After a hearing, an administrative law judge filed an opinion on April 19, 2023. The administrative law judge found, among other things, that the claimant "sustained a compensable injury to her neck on April 16, 2022, which resolved no later than April 21, 2022." The administrative law judge thereafter entered an agreed stipulation, "5. All

matters concerning AWCC Claim No. H204976 were resolved in my April 19, 2023, Opinion and are *res judicata*.”

The party asserting the defense of *res judicata* has the burden of proof. *JeToCo Corp. v. Hailey Sales Co.*, 268 Ark. 340, 596 S.W.2d 703 (1980). In the present matter, the claimant does not contend that she is entitled to benefits related to the compensable injury which occurred on April 16, 2022, and which the administrative law judge determined “resolved no later than April 21, 2022.” Rather, the claimant contends that she is entitled to benefits related to an accidental injury allegedly occurring on May 11, 2022. The Full Commission recognizes that there was testimony at the previous hearing which pertained to the alleged May 11, 2022 accident, but there was not litigation or an adjudication related to same. The respondents did not prove that the claimant’s entitlement to benefits related to an accident occurring on May 11, 2022 was *res judicata*.

B. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

- (A) “Compensable injury” means:
  - (i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, “3. The Claimant proved by a preponderance of the evidence that she sustained a compensable injury to her neck on May 11, 2022.” The Full Commission affirms this finding. The parties stipulated that the employment relationship existed on May 11, 2022. The claimant testified that she was cleaning stalls for the respondents, and that this work required lifting heavy appliances. The claimant testified that she injured her neck while lifting a washing machine on or about May 11, 2022. The claimant’s husband, Thomas Beals, corroborated the claimant’s testimony. The administrative law judge examined Thomas Beals at hearing, and Mr. Beals expressly testified that the claimant injured her neck while lifting a heavy appliance in



the course of employment. It was noted at Sherwood Urgent Care on June 28, 2022 that the claimant had injured her neck on May 11, 2022.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a “compensable injury” in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012). The claimant proved that she sustained an accidental injury causing physical harm to her neck. The claimant proved that the accidental injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident which was identifiable by time and place of occurrence on or about May 11, 2022. The claimant also established a compensable injury by medical evidence supported by objective findings which included reversal of the normal lordotic curvature as demonstrated in the cervical MRI taken November 16, 2022. Such an abnormality can be interpreted as objective medical evidence establishing a compensable injury. *See Saline Cnty. Judge v. Crouch*, 2013 Ark. App. 589; *King v. Peopleworks*, 97 Ark. App. 105, 244 S.W.3d 729 (2006). The Full Commission finds that the objective medical evidence was causally related to the compensable injury which occurred on May 11, 2022 and was not the result of a pre-existing condition or prior injury.

C. Temporary Disability

Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages, whereas temporary partial disability is that period within the healing period in which the employee suffers only a decrease in her capacity to earn the wages she was receiving at the time of the injury. *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). “Healing period” means “that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12)(Repl. 2012). Whether an employee’s healing period has ended is a question of fact for the Commission. *Dallas County Hosp. v. Daniels*, 74 Ark. App. 177, 47 S.W.3d 283 (2001).

An administrative law judge found in the present matter, “5. The Claimant proved her entitlement to temporary total disability from May 12, 2022 until January 12, 2023. She also proved her entitlement to temporary partial disability from the date she began working part-time and continuing.”

The Full Commission finds that the claimant proved she was entitled to temporary total disability benefits beginning May 14, 2022 and continuing until January 12, 2023. We have determined *supra* that the claimant proved she sustained a compensable injury to her neck on May 11, 2022. The claimant’s testimony indicated that she continued to work until the respondents terminated her employment on or about May 14, 2022. The Full Commission therefore finds that the claimant remained within a healing

period and was totally incapacitated from earning wages beginning May 14, 2022. The claimant testified at a hearing held January 20, 2023 that she began working part-time for another employer the previous Friday, January 13, 2023. The record therefore shows that the claimant was no longer totally incapacitated from earning wages as of January 13, 2023. The claimant proved that she was entitled to temporary total disability benefits beginning May 14, 2022 and continuing until January 12, 2023.

The evidence does not demonstrate that the claimant was totally incapacitated from earning wages after January 12, 2023. However, the record shows that the claimant has remained within a healing period since that time. No doctor or treating medical professional has opined that the claimant's healing period has ended for the compensable injury the claimant sustained to her neck on May 11, 2022. A hearing was held on February 9, 2024. The claimant testified on cross-examination that she had been employed with "Doc Clement" for approximately one month. The claimant testified, "It's a full watch center, and basically you watch the cameras and look for foals and mares in distress. It's still horses but it's nothing that I'm used to doing, which was grooming." The claimant testified that she was working approximately 30 hours per week. The Full Commission finds that the claimant proved she remained within a healing

period and was partially incapacitated from earning wages beginning January 13, 2023 until a date yet to be determined.

After reviewing the entire record *de novo*, therefore, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her neck on May 11, 2022. The respondents did not prove that *res judicata* bars the claim. The claimant proved that the medical treatment of record following the compensable injury, including the February 28, 2023 recommendation of referral to a neurologist, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The Full Commission finds that the claimant proved she was entitled to temporary total disability benefits beginning May 14, 2022 and continuing through January 12, 2023. The claimant proved that she was entitled to temporary partial disability benefits beginning January 13, 2023 until a date yet to be determined.

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

\_\_\_\_\_  
M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant proved she sustained a compensable injury to her neck on May 11, 2022, for which she is entitled to temporary total disability benefits, temporary partial disability benefits and medical benefits. Compensability of the claimant's May 11, 2022 neck injury is res judicata.

Res judicata applies where there has been a final adjudication on the merits of the issue by a court of competent jurisdiction on all matters litigated and those matters necessarily within the issue which might have been litigated. *Castleberry v. Elite Lamp Company*, 69 Ark. App. 359, 13 S.W.3d 211 (2000). It is well settled that this doctrine applies to decisions of the Commission. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996).

The key question regarding the application of res judicata is whether the party against whom the earlier decision is being asserted had a full and fair opportunity to litigate the issue in question. *Castleberry*, 69 Ark. App. 359, 13 S.W.3d 211. *Res judicata* bars the relitigation of not only issues actually litigated, but also those issues that *could have been litigated*. *Rothrock v. Advanced Env'tl. Recycling*, 2018 Ark. App. 88, 544 S.W.3d 61 (2018).

For the purposes of workers' compensation claims, a decision becomes final and res judicata applies when no appeal is made from a decision within 30 days. *Harvest Foods*, 52 Ark. App. 72, 914 S.W.2d 776.

In the present matter, the question is not whether the claimant's May 11, 2022 injury was actually litigated, but rather whether it could have been litigated at the 2023 hearing. The alleged injuries here occurred less than one month apart.

The claimant obtained an MRI of her cervical spine on November 16, 2022, showing foraminal stenosis and nerve impingement at C5-6 and began treating with Mr. William James, CRNA in December 2022, receiving steroid injections for that issue. However, the claimant did not file a form AR-C for her May 2022 injury until September 26, 2023, conveniently after the administrative law judge's April 2023 opinion.

The claimant is clearly attempting to resurrect issues that she had a full and fair opportunity to litigate in 2022, using our procedures as a safety-net for a claim supported by her own self-serving testimony. The claimant failed to address her May 2022 injury at the 2023 hearing and for this reason, this issue is res judicata.

There are simply no objective findings that an injury occurred on May 11, 2022, and for these reasons the claimant has failed to meet her burden of proving that she sustained a compensable injury on that date.

Arkansas Code Annotated section 11-9-102 (4)(A)(i) provides that a compensable injury includes “[a]n accidental injury causing internal or external physical harm to the body. . . An injury is ‘accidental’ only if it is caused by a specific incident and is identifiable by time and place of occurrence.”

Generally, a specific incident injury is an accidental injury arising out of the course and scope of employment caused by a specific incident identifiable by time and place of an occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). This, therefore, requires that a claimant establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an

injury as defined in Ark. Code Ann. §11-9-102(16) and; (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i).

A compensable injury must be established by medical evidence supported by "objective findings." Ark. Code Ann. § 11-9-102(4)(D). Objective findings cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16).

It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.*

The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *White v. Gregg Agricultural Enterprises*, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

Here, the self-serving testimony of the claimant and her husband are the only evidence that the claimant's alleged May 2022 injury was the source of her cervical problems. The claimant is a 50-year-old woman with



neural impingement that is largely degenerative. There are no objective findings linking these issues to the claimant's alleged injury.

Accordingly, for the reasons set forth above, I respectfully dissent.

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MICHAEL R. MAYTON, Commissioner